

3378.1. Debriefing Process.

(a) Debriefing is the process by which a gang coordinator/investigator determines whether an inmate/parolee (subject) has dropped out of a gang. A subject shall be debriefed only upon his or her request, although staff may ask a subject if he or she wants to debrief. Debriefing shall entail a two-step process that includes an interview phase and an observation phase.

(b) The purpose of debriefing interview is to provide staff with information about the gang's structure, activities and affiliates. A debriefing is not for the purpose of acquiring incriminating evidence against the subject. The object of a debriefing is to learn enough about the subject and the subject's current gang to: (1) allow staff to reasonably conclude that the subject has dropped out of the gang, and (2) allow staff to reclassify the subject based upon the inmate's needs in conjunction with the security of the institution, as well as, the safety and security of staff and other inmates.

(c) SHU inmates undergoing the debriefing process shall be subject to a period of observation in a segregated housing setting with other inmates who are also undergoing the debriefing process. The period of observation shall be no greater than 12 months.

(d) Upon completion of the debriefing process, the inmate shall be housed in a facility commensurate with the inmate's safety needs. In the absence of safety needs, the inmate shall be housed in a facility consistent with his or her classification score.

NOTE: Authority cited: section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; and *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800.

HISTORY:

1. New section filed 8-30-99 as an emergency; operative 8-30-99 (Register 99, No. 36). Pursuant to Penal Code section 5058(e), a Certificate of Compliance must be transmitted to OAL by 2-8-2000 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 8-30-99 order transmitted to OAL 2-7-2000 and filed 3-21-2000 (Register 2000, No. 12).

3378.2. Advisement of Rights During Debriefing.

A waiver of the right against self-incrimination is not a precondition of an inmate/parolee (subject) undergoing a debriefing since the information is provided for administrative purposes. A subject shall not be required to complete the debriefing process and the subject is free to terminate the debriefing at any time. If, during a debriefing, a subject makes a statement that tends to incriminate the subject in a crime, the gang coordinator/investigator may stop any discussion about the matter and continue on with another topic. Prior to questioning the subject about the incriminating matter, the subject must waive the right against self-incrimination. The decision by the subject to exercise the right against self-incrimination shall not affect the determination of whether the subject successfully participated in the debriefing.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 5054 and 5068, Penal Code; *Sandin v. Connor* (1995) 515 U.S. 472; *Madrid v. Gomez* (N.D. Cal. 1995) 889 F.Supp. 1146; and *Toussaint v. McCarthy* (9th Cir. 1990) 926 F.2d 800.

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3379. Inmate Transfers.

(a) Transfer requirements.

(1) Any inmate transfer from a facility other than a reception center shall require a classification committee action and endorsement by a classification staff representative (CSR). In the cases of

civil addicts transferring to community correctional facilities and illegal aliens transferring for the purpose of deportation proceedings, the Classification and Parole Representative (C&PR) may endorse such cases following the classification committee action.

(2) An inmate for whom a recall of commitment report under provisions of Penal Code Section 1170(d) is required, shall not be transferred, unless for emergency medical treatment, until the report is completed. Reception center process cases shall be excluded from this provision.

(3) Except in emergencies or for special housing, inmates shall not be transferred within 90 days of their release date, or within 90 days of a Board of Prison Terms (BPT) appearance. If a case requires transfer within the 90-day period, the appropriate BPT report shall be completed by the sending institution prior to the transfer.

(4) A warden or superintendent may temporarily suspend a scheduled inmate transfer. Such suspension shall constitute a classification action and be recorded on a chrono as provided by section 3375(a)(2) of these regulations, including the reason for the action and a recommendation for an alternative program assignment.

(5) If an inmate has not transferred within 30 days of CSR endorsement, the sending institution shall report that fact to the Chief, Classification Services who shall either direct the institution to proceed with the transfer or present the case to the next CSR for alternative action.

(6) Transfer to another state. Transfer of a California prison inmate to an out-of-state prison facility shall not occur prior to the inmate signing a CDC Form 294, Interstate Compact Placement Agreement, witnessed by the institution head or delegate.

(7) Transfer to a federal prison. Transfer of a California prison inmate to a federal prison facility shall not occur until:

(A) The inmate has been informed of the right to private consultation with an attorney their choice concerning rights and obligations pursuant to Penal Code section 2911.

(B) The warden or superintendent or delegate has witnessed the inmate's signing of a Federal Prison System Placement Agreement consent form and an acknowledgement of having been informed regarding rights and obligations.

(8) An inmate may, prior to scheduled transfer, revoke their consent to transfer to out-of-state or federal prison.

(9) California Out-of-State Correctional Facility (COCF) Transfers. Every male inmate is potentially eligible for a COCF transfer. Every male inmate shall be reviewed for transfer eligibility to the COCF program during Reception Center processing, at initial classification committees, and at any classification committee when any temporary ineligibility for COCF transfer has been resolved. COCF transfers may occur voluntarily or involuntarily.

(A) Eligibility. A CDCR male inmate is eligible to be transferred to COCF if the inmate:

1. Has remaining time to serve of no less than 6 months and no more than 30 years at the time of CSR endorsement.

2. Is Security level I-III.

3. Has a degree of custody established at or potentially eligible for Medium A, Medium B or Close B Custody.

(B) Ineligibility. A CDCR inmate is ineligible to be transferred if:

1. The inmate has a custody designation level established at or is potentially eligible for Minimum A, Minimum B, or Close A.

2. In CDCR's discretion, considerations such as disciplinary history, security concerns, or other case factors make the transfer of an inmate inappropriate.

(C) Any California inmate who volunteers or is notified that he is eligible for involuntary transfer to COCF shall be informed of the opportunity to seek legal consultation with an attorney:

1. Prior to the completion of the Institutional Staff Recommendation Summary (ISRS) for Reception Center inmates.

2. Prior to a classification committee for non-Reception Center inmates.

3. Inmates shall have the ability to waive the attorney consultation.

(D) The notification of eligibility, and the notification of opportunity for attorney consultation and interpreter needs, shall be documented on the CDC Form 128-B (Rev 4/74), General Chrono.

(E) The information regarding the attorney consultation or waiver of such consultation by the inmate shall be documented:

1. At the Reception Centers, on the ISRS.

2. For all non-Reception Center inmates, on the CDC Form 128-G (Rev. 10/89), Classification Chrono.

(F) Voluntary Transfer. An inmate who is eligible for transfer to COCF and volunteers for such a transfer shall sign a CDCR Form 2169 (Rev. 8/08), Out Of State Placement Agreement, which is hereby incorporated by reference. Notwithstanding subdivision (a)(6), COCF inmates are not required to sign a CDC Form 294 (Rev. 7/88). Upon notification of potential involuntary transfer, inmates shall no longer be eligible for voluntary transfer.

1. An inmate who volunteers for transfer to COCF may waive his opportunity to consult with an attorney by signing a CDCR Form 2168 (Rev. 08/08), Attorney Waiver Statement, which is hereby incorporated by reference.

2. Inmates with serious medical or dental conditions as determined by designated Health Care staff, or inmates having any other applicable serious medical condition which appropriately designates them under the supervision of the medical Receiver may volunteer for a COCF transfer upon executing written consent. Those inmates who are presently within the Mental Health Services Delivery System at any level of care may not volunteer for a COCF transfer even upon executing written consent, until and unless their transfer is permitted by court order. An inmate for whom appropriate care out of state is available and for whom such transfer will not have a detrimental impact on the healthcare needs of the inmate, and who has executed written consent to transfer to COCF, will be considered for transfer on a case-by-case basis by designated Health Care staff.

(G) Involuntary Transfer. An inmate is not eligible for involuntary transfer if:

1. The inmate has a serious medical or dental condition as determined by designated Health Care Staff, or the inmate has a serious medical condition as determined by designated Health care Staff operating as applicable under the supervision of the medical Receiver.

2. The inmate has a serious mental disorder as defined by the class certification order (executed October 23, 1991) and Revised Program Guide (2009 Revision, Chapter 1, Section D.1., page 12-1-6) of *Coleman v. Schwarzenegger* and who is a present member of the Mental Health Services Delivery System at any level of care.

3. The inmate is a class member under the federal court decree in *Clark v. Schwarzenegger* at the level of DD1, DD2 or DD3.

4. The inmate is a class member under the federal court decree in *Armstrong v. Schwarzenegger* and has a medical condition related to a disability that renders extended travel unsafe and/or requires active medical intervention.

5. The inmate is a class member under the federal court decree in *Armstrong v. Schwarzenegger* and cannot perform daily living tasks including eating, dressing, and hygiene without personal assistance. Inmates in this group may be housed in Outpatient Housing Units or medical facilities. Inmates who merely require assistance such as another person to carry a tray at meals or read written documents are specifically not excluded from transfer.

6. The inmate is a class member under the federal court decree in *Armstrong v. Schwarzenegger* and is on dialysis.

(H) Involuntary transfer priorities include but are not limited to the following:

1. Inmates who have been previously deported by the federal government and are criminal aliens subject to immediate deportation; or have been convicted of an aggravated felony as defined by federal statute 8 USC section 1101(a)(43) and are subject to deportation. Inmates in these groups are eligible for involuntary transfer when they have an active hold placed by Immigration and Customs Enforcement (ICE) or they have been referred to ICE by CDCR for a determination of whether ICE will place an active hold on them.

2. Inmates who are paroling outside of California.

3. Inmates who are unassigned and had no visit with an immediate family member as defined in Section 3000 during the one year period prior to the date that the eligibility list with the inmate's name is generated.

4. Inmates in any job assignment, as determined by CDCR, and had no visit with an immediate family member during the one year period prior to the date that the eligibility list with the inmate's name is generated.

5. Inmates who are unassigned. Visiting history will not affect a transfer decision.

6. Inmates in any job assignment, as determined by CDCR. Visiting history will not affect a transfer decision.

7. Any other inmate who is not in any of the groups above but is potentially eligible for a COCF transfer.

(I) Inmates transferred to a COCF program remain under the legal custody of the CDCR and shall be subject to the rules, rights and privileges of the CDCR in accordance with the California Code of Regulations (CCR), Division 3, Title 15.

(b) Placement in level. An inmate endorsed for any level placement and transferred to an institution with several levels shall be placed in the endorsed level facility within 60 days of arrival or shall be referred to the next scheduled CSR for alternative action. A warden or superintendent may temporarily place an inmate in a facility of an institution for which the inmate has not otherwise been endorsed. Such placement shall not exceed 30 days without CSR review and approval. Reasons for such placement may include protection or medical needs of the inmate, an incompleting investigation, disciplinary action, court proceedings, or a pending transfer.

(c) Disciplinary and security factors. Prior to transfer of an inmate, the sending institution shall resolve any matters related to incomplete disciplinary punishment or establishment of a determinate period to be served in a SHU at the receiving facility. Disciplinary detention shall be completed, suspended, or commuted to time served. If a transfer related to misbehavior does not require SHU placement but the inmate is transferred to an institution of higher level than indicated by the inmate's classification score, the endorsing CSR shall establish a date for follow-up review by the receiving institution.

(d) Medical and psychiatric transfer.

(1) The sending institution shall, prior to any medical or psychiatric transfer, determine whether the inmate has enemies or might be in danger at the receiving facility, and shall:

(A) Inform staff of the receiving facility by telephone prior to the transfer regarding any precautions needed to protect the inmate.

(B) Make an alternate institutional transfer arrangement which will not jeopardize the inmate.

(2) An inmate transferred to CMF for psychiatric treatment because of acute mental illness requiring inpatient psychiatric hospitalization or because of the recency of a major mental illness or when in partial remission of such illness, is entitled to a hearing regarding the necessity for transfer. Upon arrival at CMF, such inmate shall be served with a Notice of Transfer to California Medical Facility for Mental Health Treatment which shall explain

the inmate's rights. The inmate may sign the notice waiving his right to a hearing or if opposed to the transfer, may request a hearing.

(3) The hearing shall be held within seven days from arrival at CMF. If the hearing cannot be held within seven days, the inmate shall be informed in writing of that fact, the reason for the delay, and of an estimated date he may expect the hearing. The hearing shall consist of a classification committee review of the case and shall include the following:

(A) Determination that the inmate has received written notice of the transfer to CMF stating that the inmate has a right to a hearing and that such hearings are normally held within seven days after arrival at CMF.

(B) The information relied upon in ordering the transfer to CMF shall be disclosed to the inmate. The inmate shall be heard in person and be permitted to present evidence, including witnesses, in his behalf.

(C) One member of the classification committee shall be a psychiatrist employed by the Department of Corrections. This person shall be an independent decision maker and shall not be the inmate's treating psychiatrist at either the sending or receiving institution.

(D) Following the hearing, the independent decision maker shall inform the inmate in writing of the committee's decision and the information relied upon in arriving at the decision.

(E) The inmate may appeal the decision. A ruling on such appeal shall be returned within 20 working days.

(4) Periodic clinical progress reports on a CDC Form 128-C shall be made at least quarterly. A summary CDC Form 128-C report, classification action and CSR endorsement are required when an inmate's program category is changed.

NOTE: Authority cited: Section 5058, Penal Code. Reference: Sections 2911, 5025, 5054, 5068, 5080 and 11191, Penal Code; Sections 8550 and 8567, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *Armstrong v. Schwarzenegger*, United States District Court, N.D. Cal., No. C-94-2307 CW, Stipulation and Proposed Order issued November 30, 2006; *Coleman v. Schwarzenegger*, United States District Court, E.D. Cal., No. CIV-S-90-0520 LKK JFM P, Order issued November 6, 2006; and *Whitaker v. Rushen* (9th Cir. 1983) 720 F.2d 1132, 1135.

HISTORY:

1. New section filed 8-7-87 as an emergency; operative 8-7-87 (Register 87, No. 34). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 12-7-87.
2. Certificate of Compliance as to 8-7-87 order transmitted to OAL 12-4-87; disapproved by OAL (Register 88, No. 16).
3. New section filed 1-4-88 as an emergency; operative 1-4-88 (Register 88, No. 16). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 5-3-88.
4. Certificate of Compliance as to 1-4-88 order transmitted to OAL 5-3-88; disapproved by OAL (Register 88, No. 24).
5. New section filed 6-2-88 as an emergency; operative 6-2-88 (Register 88, No. 24). A Certificate of Compliance must be transmitted to OAL within 120 days or emergency language will be repealed on 9-30-88.
6. Certificate of Compliance including amendment transmitted to OAL 9-26-88 and filed 10-26-88 (Register 88, No. 50).
7. Editorial correction of printing errors in subsection (b), CDC Form 294 and CDC Form 802 (Register 92, No. 5).
8. Amendment of subsection (a)(1) and Note filed 1-30-96 as an emergency; operative 1-30-96 (Register 96, No. 5). A Certificate of Compliance must be transmitted to OAL by 5-29-96 or emergency language will be repealed by operation of law on the following day.
9. Certificate of Compliance as to 1-30-96 order, including further amendment of subsection (a)(1) and Note, transmitted to OAL 5-14-96 and filed 6-25-96 (Register 96, No. 26).
10. Change without regulatory effect amending subsection (c) filed 3-18-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 12).
11. New subsections (a)(9)-(a)(9)(I) and amendment of Note filed 10-30-2008 as an emergency; operative 10-30-2008 (Register 2008, No. 44). Pursuant to Penal Code section 5058.3, a Certificate of Compliance must be transmitted to OAL by 4-8-2009 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 10-30-2008 order, including further amendment of section and Note, transmitted to OAL 4-1-2009 and filed 5-12-2009 (Register 2009, No. 20).
13. Editorial correction of subsection (a)(9)(G)6. (Register 2009, No. 23).